Supreme Court, U.S.
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No. 00-745

In The

Supreme Court of the United States

WILLIAM G. HOLLINGSWORTH;
LISA R. HOLLINGSWORTH;
and JEFFREY D. FERNANDES,

Petitioners,

v.

LANE COMMUNITY COLLEGE; LANE COMMUNITY COLLEGE BOARD OF EDUCATION; JERRY MOSKUS in his official capacity as President of Lane Community College; and LINDA P. FOSSEN in her official capacity as Vice President for Student Services of Lane Community College,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JEFFREY M. BATCHELOR*
LYNN R. NAKAMOTO
MARKOWITZ, HERBOLD, GLADE & MEHLHAF, P.C.
3000 Pacwest Center
1211 S.W. Fifth Avenue
Portland, Oregon 97204
Telephone: (503) 295-3085

THOMAS S. MOORE
THOMAS S. MOORE, P.C.

Counsel for Respondents
**Counsel of Record for Respondents*

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

On July 12, 2000, following this Court's decision in *Board of Regents of the University of Wisconsin System v. Southworth*, 529 U.S. 217 (2000), the Board of Education for the Lane Community College District adopted the following policy concerning funding of programs to facilitate extracurricular student speech:

> Students may be assessed a mandatory fee for the purpose of supporting a board approved student-initiated program. The board will approve those student-initiated programs that it determines provide educational value to the students. After board approval, the fee initiative will be placed on the ballot for the student elections. The student election results, as they relate to the fee initiative, are advisory only. After the student elections, the fee initiative will come before the board for final approval or disapproval.

1. Does the adoption and implementation of this viewpoint-neutral policy render petitioners' case moot under Article III of the U.S. Constitution?

2. Does the adoption and implementation of this viewpoint-neutral policy satisfy the requirement that public colleges and universities protect the First Amendment interests of students who object to the use of activity fees to fund programs to facilitate extracurricular student speech?

Prior to the revision of Board policy as set out above, when a referendum vote of the students was not merely advisory, no student group requesting fees to facilitate

QUESTIONS PRESENTED – Continued

extracurricular student speech was denied funding from student activities fees.

3. Regardless of the revised policy, does the petition present a case appropriate for judicial review, where the petitioners have not been harmed or threatened with harm?

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STATEMENT OF THE CASE

a. This Court in *Board of Regents v. Southworth*, 520 U.S. 217, 120 S. Ct. 1346 (2000), considered the constitutionality of the University of Wisconsin's mandatory student activity fee system. The Court held that while "[t]he First Amendment permits a public university to charge its students an activity fee used to fund a program to facilitate extracurricular student speech," the "University must provide some protection to [objecting] students' First Amendment interests. . . . " *Id.* at 221, 233. The "proper measure, and the principal standard of protection for objecting students," the Court held, "is the requirement of viewpoint neutrality in the allocation of funding support." *Id.* at 233.

The parties in *Southworth* stipulated that funds allocated through the Student Government and Activity Fund and the General Student Services Fund were distributed in a viewpoint neutral fashion. Based on this stipulation, the Court upheld the constitutionality of the mandatory student fee system in *Southworth*. *Id.* at 233-34. As to funds distributed pursuant to student referendum, however, the Court was dubious. "The whole theory of viewpoint neutrality is that minority views are treated with the same respect as are majority views," the Court wrote, and "[t]o the extent the referendum substitutes majority determinations for viewpoint neutrality it would undermine the constitutional protection the [funding] program requires." *Id.* at 235. Because the record in *Southworth* did not fairly disclose "what protection, if any, there is for viewpoint neutrality in this part of the process," a remand was deemed necessary to resolve the point. *Id.* at 235-36.

b. Petitioners' ("the Students") statement of the case is crafted to accommodate their thesis that the issue unanswered in *Southworth* is presented here. But the issue unresolved in *Southworth* has never been an issue in this case, and respondents ("the College") amended the policy governing the allocation of mandatory student activity fees months before the Students filed their certiorari petition, in any event. The Students' statement of the case, the College respectfully submits, does not reflect the nature of the case presented in the district court or the circuit court; and it omits to mention that in July 2000, in response to the Court's signal in *Southworth*, the College amended its policy to ensure that all decisions concerning the allocation of mandatory student activity fees are implemented in a viewpoint neutral fashion.

c. To explain, the Students' complaint did not allege that the referendum aspect of the College's mandatory student activity fee system violated the principles of viewpoint neutrality identified in *Rosenberger v. Rector and Visitors, Univ. of Va.*, 515 U.S. 819 (1995), the template for decision in *Southworth*. Rather, the Students' Section 1983 complaint alleged that they derived no educational benefit from the activities of the Oregon Student Public Interest Research Group ("OSPIRG"); that they disagreed with OSPIRG-espoused political and ideological beliefs; and that the use of any part of their student fees to fund OSPIRG activities violated their free speech and association rights. The complaint did not ask that the mandatory student funding program be set aside in its entirety. Rather, it asked (i) for a declaration that the use of student fees to fund OSPIRG violated the Students' First Amendment rights; (ii) that the College be enjoined to

institute a check-off system to provide students the choice to direct their fees to OSPIRG or not; and (iii) for a refund in the amount of the student fees they paid to fund OSPIRG – two dollars for the terms that each of the Students paid the activity fee – plus interest.

The Students moved for summary judgment. They relied primarily on this Court's decisions limiting compelled financial subsidies of political or ideological causes in other contexts. *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209 (1977) (teachers could not be compelled to fund union's ideological activities not germane to bargaining agreement); *Keller v. State Bar of Cal.*, 496 U.S. 1 (1990) (lawyers could not be compelled to fund bar association's ideological activities not germane to regulation of the profession). Under *Galda v. Rutgers*, 772 F.2d 1060 (3d Cir. 1985), the Students argued, OSPIRG's activities were "social, political, and ideological," and the district court was therefore required to scrutinize strictly whether "compelling state interests" justified allocation of part of their student fees to OSPIRG. According to the Students, the College could advance no compelling state interest, because (i) some students, including the Students, did not take advantage of OSPIRG's on-campus educational benefits, and (ii) OSPIRG's off-campus activities provided the Students with no educational benefit. Voluntary funding of OSPIRG, the Students argued, was the "obvious less restrictive alternative" to mandatory fees.

The College also moved for summary judgment. The College, like the Students, did not anchor its argument in distinctions in the methods by which it secured approval for mandatory funding. Rather, the College argued that it should be given wide latitude to define and carry out its

educational mission. It maintained that it advanced this mission by creating a forum for a mix of student groups and activities, all linked to the students' educational, cultural, and physical development, even if some of the groups or activities presented viewpoints with which some students disagreed. Having created a forum for the expression of ideas, the College argued that under *Rosenberger*, it could not discriminate by impairing funding of particular groups based on viewpoint. As a consequence, the College maintained, the Students' proposed voluntary funding program solely for OSPIRG's activities would run afoul of *Rosenberger*.

In an order dated April 7, 1997 (App. C), U.S. District Judge Michael R. Hogan adopted the findings and recommendations of U.S. Magistrate Judge John P. Cooney of February 11, 1997 (App. E). The court rejected the Students' thesis and granted the College summary judgment. Applying the First Amendment analysis in *Carroll v. Blinken*, 957 F.2d 991 (2d Cir. 1992), and *Carroll v. Blinken*, 42 F.3d 122 (2d Cir. 1994), the district court found that the College established a substantial interest in funding student organizations to create "a forum for civic participation, communication, and debate" (App. E-10, E-11). It rejected the Students' claim, renewed in this Court, *see* Pet. 3, 6-7, that OSPIRG's activities were those of a political action group (App. E-12). The court applied the fact-based test in *Galda v. Bloustein*, 686 F.2d 159 (3d Cir. 1982), and found that OSPIRG's activities, both on-campus and off, were germane to the College's educational mission and furthered its "substantial interest in education" (App. E-12, E-13).

d. On appeal to the Ninth Circuit Court of Appeals, the Students reiterated their position that the First Amendment protects them from compelled financial support of OSPIRG, given their disagreement with its views. In their opening brief, the Students identified the issue for review as follows: "Whether the United States Constitution permits a state college to compel students to pay a specified, nonrefundable sum to an independent outside organization that espouses and actively promotes a political and ideological philosophy to which the students are adamantly opposed." The Students argued not that referendum approval of the use of student fees was constitutionally infirm. Rather, they argued that compelled student funding of OSPIRG's alleged "political speech" could not withstand the "strict scrutiny" called for in *Abood* and *Keller*. At no point in their briefs, opening or reply, did the Students mention referendum.

In March 1999, the court of appeals rejected application of a strict scrutiny test and affirmed the district court in an unpublished memorandum decision. The court distinguished *Galda*, where a strict scrutiny test was applied in the context of a specially assessed fee given directly to an outside organization, NJPIRG. In contrast to the situation there, the funding mechanism here provided for fees to be paid to the College, not directly to OSPIRG, with subsequent allocations made to all student groups by vote of the student body (App. A-4). In addition, the court noted, the College's funding rules were aimed at expanding speech on campus and were viewpoint-neutral (App. A-5).

e. In April 1999, the Students petitioned for rehearing or rehearing *en banc*. Again, they did not raise the

issue of allocation of activity fees by student vote or referendum at all, much less question whether the allocation at the College had in fact been viewpoint-neutral. Rather, they noted that in March 1999, this Court had granted certiorari in *Southworth*, and they argued that the decision there would no doubt determine whether a strict scrutiny test applied. The court of appeals stayed the case pending this Court's decision in *Southworth*.

The court of appeals called for supplemental briefing following this Court's decision in *Southworth* in March 2000. In response, and for the first time in the case, the Students argued that use of a student vote to approve funding for student activities, including prior student fee initiatives at the College, means that "access to the public forum depends entirely upon majoritarian consent." For the first time, the Students argued that fees "are not allocated in a viewpoint neutral manner." As a consequence, the Students argued, they were entitled to prevail as a matter of law on the record before the court of appeals. Limiting the relief requested, they asked the court of appeals to direct entry of judgment for declaratory and injunctive relief. They did not request a remand.

The College argued that the petition for rehearing should be denied, given the Students' arguments in the district court and on appeal. They pointed out that the Students had not challenged the entire system of funding activity fees, as the Students had in *Southworth*. To the contrary, the College argued, the Students had opposed funding for only one group that they considered objectionable. The College also pointed out that the Students had (i) objected to OSPIRG's funding on the ground that its activities were not germane to the College's mission

and (ii) requested application of a strict scrutiny analysis of the College's interests. Both issues, the College continued, were resolved against the Students by *Southworth*. Last, the College argued, even if the Students had challenged the entire funding program at the College, the funding statute was viewpoint-neutral and sought to expand campus speech. The record, the College concluded, established that no student group had ever been denied funding from student activity fees (*see* App. F-40, F-41).

f. In July 2000, before the court of appeals finally ruled, the Board of Education for the Lane Community College District implemented a revised policy for allocating student activity fees (Supp. App. 1-5). That policy, entitled Tuition and Fees, states (Supp. App. 5):

> Students may be assessed a mandatory fee for the purpose of supporting a board approved student-initiated program. The board will approve those student-initiated programs that it determines provide educational value to the students. After board approval, the fee initiative will be placed on the ballot for the student elections. *The student election results, as they relate to the fee initiative, are advisory only. After the student elections, the fee initiative will come before the board for final approval or disapproval.* (Emphasis supplied.)

Under the Board's policy, the decision regarding allocation of student activity fees belongs to the Board, not to

the students. It is followed and remains in place today (Supp. App. 2-3).[1]

g. The court of appeals denied the petition for rehearing in August 2000. It held that a remand to the district court was "not required to determine whether the referendum process protected viewpoint neutrality because it is undisputed that no request [for funding] was ever denied" (App. B-2). As a consequence, the court concluded, "no justiciable issue remains . . . " (*id.*). The Students, all former students of the College as of 1997, *see* Pet. at ii and App. E-2, then filed their petition for a writ of certiorari, which should be denied.

REASONS FOR DENYING THE WRIT

A. Whether The College's Student Referendum Process Protected Viewpoint Neutrality Is Moot.

a. The Students pose the question presented for decision as whether the rule of viewpoint neutrality formulated in *Southworth* is violated "when the funding of individual political and ideological student groups depends upon the majority determinations of student referenda." Although that question was not litigated in

[1] The College has filed the affidavit of J.R. Moskus, President of the College, who provides the text of the revised policy. Dr. Moskus testifies that the Board of Education duly adopted the revised policy, that the College has followed that policy since July 2000, and that the College does not rescind or allocate student activity fees based on majority student vote regarding the content of a particular organization's speech or viewpoint.

this case, had it been, the issue is moot. Under Article III of the Constitution, federal courts decide "cases" or "controversies," and there is no case or controversy if the issues presented are not "live," if the parties have no legally cognizable interest, no personal stake, in the outcome. *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 395-96 (1980). There is no case or controversy here.

b. Following this Court's decision in *Southworth*, the Students abandoned their request for a refund of the minimal part of their student fees allocated to OSPIRG and asserted an unfettered right to declaratory and injunctive relief based on the College policy of allocating student activity fees to OSPIRG according to student vote. Consistent with this, the Students' formulation of the question presented for decision in this Court assumes that the College's funding of student groups is based on the outcome of student referenda, which, as the Court now knows, is not so.

Funding of OSPIRG or any other student group at the College does not now, and will not in the future, depend "upon the majority determinations of student referenda." As of July 2000, final decisions to allocate the College's student activity fees have been made by the College District's Board of Education, not by vote of the students. As of July 2000, shortly after the Court's decision in *Southworth*, the student vote on activity fee initiatives has been purely advisory, as expressly stated in the Board's Tuition and Fees policy. Here, as in *Friends of the Earth, Inc. v. Laidlaw Envtl. Services (TOC), Inc.*, 528 U.S. 167, 189 (2000), "subsequent events [have] made it absolutely clear that the allegedly wrongful behavior could not

reasonably be expected to recur." Here, as in *Friends of the Earth*, the case is moot.

This case is not unlike those in which material changes have cured alleged constitutional defects in the law and resulted in the elimination of a case or controversy. *See, e.g., Department of Treasury v. Galioto*, 477 U.S. 556, 559-60 (1986) (equal protection challenge to statute moot after Congress amended statute to eliminate challenged distinction); *Princeton Univ. v. Schmid*, 455 U.S. 100, 103 (1982) (substantial amendment of challenged regulation mooted controversy over validity); *Diffenderfer v. Central Baptist Church of Miami, Inc.*, 404 U.S. 412, 414-15 (1972) (material change in statute governing tax exempt church property rendered case moot with respect to declaratory judgment and injunctive relief sought). Here, and consistent with *Galioto*, *Princeton*, and *Diffenderfer*, an order declaring the College's former policy invalid is not necessary, and neither is an injunction against its enforcement in the future.

c. This is apparent not only from the face of Dr. Moskus' affidavit but also from the course of this litigation. The College has asserted throughout that it was duty-bound to allocate funds on a viewpoint-neutral basis, and that it always had. The evidence bears this out. No student group has *ever* been denied funding, even under the prior policy that allowed a student vote on the allocation of fees. Everything in this record points to the reality that the College has been true to its constitutional obligations. Nothing in this record even hints that the College has ever followed the path implied by the petition – or that it ever will. As a consequence, there are no familiar indicia that recurrence of challenged conduct

will occur if a decision is not made in this case – *e.g.*, resistance to changes, *see Adarand Constructors, Inc. v. Slater*, 528 U.S. 216, 223 (2000); or insignificant changes made in new laws purporting to remedy the challenged law, *see Northeastern Fla. Chapter of the Associated General Contractors of America v. City of Jacksonville, Fla.*, 508 U.S. 656, 660-62 (1993). To the contrary, the case before the Court today is moot.

B. The Question Presented In The Students' Petition Is Not Ripe, Or They Lack Standing To Assert It.

a. As framed by the Students and litigated below, this case did not focus on whether the College's fee initiatives were viewpoint-neutral. At no time before they filed their supplemental brief in the court of appeals, and only well after they filed their petition for rehearing, did the Students argue that their First Amendment rights had been violated on the grounds asserted in this Court. In fact, the Students' position throughout had been antithetical to the notion that the College should allocate activity fees in a viewpoint-neutral manner. Viewpoint-neutrality was not their point.

Accordingly, and not surprisingly, when the court of appeals encountered the Students' abrupt about-face in the supplemental briefing, it considered whether the referendum-based issue was justiciable. Although the Students argue that the court of appeals applied a new ripeness test in denying rehearing (Pet. 12-13), nothing in the court's order indicates that this is so. To the contrary, under the traditional test for ripeness applied by this

Court, the court of appeals correctly ruled that the question the Students now seek to present is not ripe, or that they lack standing to assert it.

b. As here pertinent, an issue is appropriate for judicial review only when there has been "concrete action applying the regulation to the claimant's situation in a fashion that harms or threatens to harm him." *Lujan v. National Wildlife Fed'n*, 497 U.S. 871, 891 (1990). Here, of course, and in contrast to *Southworth*, the College has *never* denied funding to a student group, with or without a student vote (Pet. 13). Here, there has been no showing that the student vote once required for allocation of student activity fees actually resulted in harm, or even threatened actual harm to the Students, or to any student, by suppressing minority views.

The Students are mistaken, moreover, in their assertion (Pet. 13) that a referendum process, because it exists, "inherently violates viewpoint neutrality." To read this Court's decision in *Southworth* is to know that the Students are wrong. As mentioned above, the Court there observed that a referendum process, "[t]o the extent [it] substitutes majority determinations for viewpoint neutrality . . . would undermine the constitutional protection the [funding] program requires." *Southworth*, 529 U.S. at 235. Nonetheless, the Court in *Southworth* did not invalidate the referendum-based part of the program there. Rather, the Court ordered a remand to determine "what protection, if any, there is for viewpoint neutrality in [the referendum] part of the process." *Id.* at 235-36.

Here, as in *Southworth*, there is a referendum component to the College's funding program. But here, and in

contrast to *Southworth*, we can say beyond doubt that the Students have not suffered harm. Here, and in contrast to *Southworth*, the issue presented in the students' petition is not ripe, or they lack standing to assert it. *Lujan*, 497 U.S. at 891.

C. The Petition Presents No Conflict Among The Circuits.

a. Applying the *Abood-Keller* construct in its memorandum decision affirming the district court, the court of appeals concluded that funding OSPIRG was " 'germane' " to the College's "substantial governmental interests supporting the mandatory fee scheme" (App. A-5). A year later, this Court in *Southworth* set aside the *Abood-Keller* model for decision in cases of this sort. Under the circumstances, the Students argue, the Ninth Circuit Court of Appeals here, like the Seventh Circuit Court of Appeals in *Southworth*, should have remanded the case to the district court for reconsideration in light of this Court's decision. According to the Students (Pet. 10-12), the court's action here, and in contrast to the Seventh Circuit's action in *Southworth*, creates a conflict between the circuits.

The conflict described in the petition is illusory. The Court in *Southworth* established that public universities and colleges, to protect the First Amendment rights of objecting students, must allocate the specified student fees with viewpoint neutrality. 529 U.S. at 235. While the record in *Southworth* did not disclose whether the referendum aspect of the funding scheme there was viewpoint-neutral, the record here established beyond doubt that

this funding scheme was. A remand was necessary to determine whether the funding scheme in *Southworth* was viewpoint-neutral. There was no need for a remand here. There is no conflict between the Ninth Circuit's unpublished disposition in this case and the Seventh Circuit's decision on remand in *Southworth*. There is no conflict on "the same important matter. . . . " Rule 10(a).

Contrary to the petition (Pet. 12), moreover, there is no conflict between the unpublished disposition here and the Third Circuit's opinion in *Galda*, 772 F.2d 1060. The decision to remand or not, under demonstrably different circumstances, does not create a conflict on "the same important matter." It does not create a conflict that warrants Supreme Court review. At the end of the day, this Court's opinion in *Southworth* is definitive, and any perceived tension between the opinion in *Galda* and the unpublished disposition in this case has been washed away.

b. Ultimately, the court of appeals examined this case in light of this Court's decision in *Southworth* and affirmed the summary judgment. "[B]ecause no request [for funding] was ever denied," the court reasoned, there was no "justiciable issue" for decision under the *Southworth* standard (App. B-2). The petition describes this as a new ripeness requirement in conflict with the remand decisions in *Southworth* and *Galda*, but it is hard to know where the conflict lies.

The court of appeals did not create a new ripeness requirement. It applied well-established principles in light of this Court's opinion in *Southworth*. There is no Article III case or controversy if the issues are not "live,"

if the parties have no legally cognizable interest, no personal stake, in the outcome, *Geraghty*, 445 U.S. at 395-96, and student funding of the sort at issue has never been denied at the College here. In *Southworth*, and in contrast to the case here, student funding had in the past been denied by student referendum, 529 U.S. at 235, and in neither *Southworth* nor *Galda* was justiciability even an issue. There is no conflict on "the same important matter" here.

D. The Court Rejected The Students' Thesis In *Southworth*. A Decision Here Would Add Nothing Of Precedential Value.

The Students maintain that the court of appeals' unpublished disposition is not true to this Court's opinion in *Southworth*. According to the Students (Pet. 14-24), the court's pre-*Southworth* application of the *Abood-Keller* standard was at odds with *Southworth* and therefore with the First Amendment. It should be apparent by now, however, that the court of appeals decided the case the Students presented, not the case described in the petition. It should also be apparent by now that this Court rejected the Students' thesis in *Southworth*.

Although the Students complain repeatedly that the court of appeals erroneously applied the "germaneness" test from *Abood* and *Keller*, they omit to mention that they repeatedly urged both the court of appeals and the district court to apply *Abood* and *Keller*. At no time prior to this Court's opinion in *Southworth*, and despite the Court's decision in *Rosenberger*, did the Students imply, let alone argue, that viewpoint neutrality should be the

touchstone of student activity fee funding decisions at the College. To the contrary, the Students argued that OSPIRG's speech was far removed from the educational mission of the College, that they disagreed with it, and that they therefore should not be compelled to fund it. In their complaint, the Students averred that students should be permitted to check off, voluntarily, whether to participate in OSPIRG's funding.

It is not surprising, therefore, that the court of appeals relied on *Abood* and *Keller*. But that should not form the basis for certiorari now that the Court has clearly defined the applicable standard. Given the Students' theory, they plainly were not entitled to the relief they sought under the viewpoint-neutral standard in *Rosenberger* and *Southworth*. Indeed, *Southworth* rejects the notion that students need not provide financial support for speech of particular groups merely because they object. Indeed, *Southworth* rejects the idea that voluntary funding programs of the sort the Students advocate are required under the Constitution. Given the Students' theory, this case was decided against them in *Southworth*. A decision here would add nothing of precedential value.

CONCLUSION

The Court should deny the certiorari petition.

Dated: February 26, 2001.

Respectfully submitted,

JEFFREY M. BATCHELOR*
LYNN R. NAKAMOTO
MARKOWITZ, HERBOLD, GLADE & MEHLHAF, P.C.
3000 Pacwest Center
1211 S.W. Fifth Avenue
Portland, Oregon 97204
Telephone: (503) 295-3085

THOMAS S. MOORE
THOMAS S. MOORE, P.C.

Counsel for Respondents
**Counsel of Record for Respondents*

No. 00-745

IN THE
SUPREME COURT OF THE UNITED STATES
2000-2001 TERM

WILLIAM G. HOLLINGSWORTH;
LISA R. HOLLINGSWORTH;
and JEFFREY D. FERNANDES,

Petitioners,

v.

LANE COMMUNITY COLLEGE;
LANE COMMUNITY COLLEGE
BOARD OF EDUCATION;
JERRY MOSKUS in his official capacity as President of Lane Community College; and LINDA P. FOSSEN in her official capacity as Vice President for Student Services of Lane Community College,

Respondents.

AFFIDAVIT OF J.R. MOSKUS

STATE OF OREGON)

) ss.

County of Lane)

I, J.R. MOSKUS, being first duly sworn, depose and say:

1. I am the President of Lane Community College and have been at all times during the litigation of *Hollingsworth et al v. Lane Community College et al.* I make this affidavit from my personal knowledge and in connection with Respondents' Brief in Opposition.

2. As President of the College, I work with and am accountable to the Board of Education for the Lane Community College District. The Board consists of seven elected, non-paid members. The Board has primary authority for establishing policies governing the operation of the College and adopting the College's annual budget. Their charge is to oversee the development of programs and services that they believe will best serve the needs of the people of the Lane District.

3. The Board periodically reviews all College policies.

4. In accordance with the policies of the Board, I am authorized as President of the College to establish all further procedures, make all decisions, take all actions, and develop all activities consistent with the Board's policies.

5. I ensure that the College operates within the boundaries established in Board policies.

6. The Board policy that pertains to the student activity fees at issue in this case is Policy Number D.090, entitled Tuition and Fees. A true and correct copy of the current version of Policy D.090 is attached to my Affidavit as Exhibit A. The policy is also available on Lane Community College's web site at http://lanecc.edu/presoffc/board/D090.htm.

7. The Board first adopted Policy D.090 on August 10, 1977. The policy was revised on July 12, 2000. The revised policy provides as follows:

> Students may be assessed a mandatory fee for the purpose of supporting a board approved student-initiated program. The board will approve those student-initiated programs that it determines provide educational value to the students. After board approval, the fee initiative will be placed on the ballot for the student elections. The student election results, as they relate to the fee initiative, are advisory only. After the student elections, the fee initiative will come before the board for final approval or disapproval.

8. The Board duly revised Policy D.090 in accordance with its periodic review of policies to address the decision in *Board of Regents of the University of Wisconsin System v. Southworth,* 529 U.S. 217 (2000).

9. The revision to Policy D.090 was given a first reading before the Board on June 14, 2000 at a regularly called Board meeting. The revision to Policy D.090 was approved by unanimous vote of the Board after its second reading on July 12, 2000 and became effective July 12, 2000.

10. The College has in the past funded student-initiated programs or student groups from mandatory student activity fees on a viewpoint-neutral basis, and the College will continue to do so into the future. The revision to Policy D.090 seeks to ensure that is so.

11. The Board's revised policy reflects that students will be presented with fee initiatives for support of student-initiated programs. However, student election results are advisory only. The Board approves or disapproves all fee initiatives.

12. The revised policy has been followed since its revision in July 2000, and it will be followed in the future by me and by the College.

13. I know of no Board member or member of the College administration opposed to Policy D.090 and I know of no other interest in changing the policy in the future to allow students to control funding for student-initiated programs on the basis of their content or viewpoint.

/s/ J.R. Moskus
J.R. Moskus

SUBSCRIBED AND SWORN TO before me this 21st day of February, 2001.

/s/ Lorelei Kyllonen
(NOTARY SEAL)Notary Public for Oregon
My Commission Expires: 02/08/03

EXHIBIT A to J.R. Moskus Affidavit

BOARD OF EDUCATION POLICIES

POLICY NUMBER: D.090
POLICY TYPE: MISCELLANEOUS
POLICY TITLE: TUITION AND FEES

Students may be assessed a mandatory fee for the purpose of supporting a board approved student-initiated program. The board will approve those student-initiated programs that it determines provide educational value to the students. After board approval, the fee initiative will be placed on the ballot for the student elections. The student election results, as they relate to the fee initiative, are advisory only. After the student elections, the fee initiative will come before the board for final approval or disapproval.

ADOPTED: November 9, 1998
REVISED: July 12, 2000

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Please address comments regarding this page to Tracy Simms

URL http://www.lanecc.edu/presoffc/board/D090.htm

Revised 1/25/99 (llw)

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